

Division of Special Education/Early Intervention Services

Use of Exclusion, Restraint and Seclusion

Overview

In 2002, the Maryland General Assembly enacted a law requiring MSDE to convene a taskforce to address exclusion restraint, and seclusion of students in local school systems and nonpublic special education facilities throughout Maryland. Regulations were promulgated and the implementation of these regulations was effective beginning September 2003 [COMAR 13A.08.04]. The State Board of Education approved amendments to these regulations on August 25, 2009.

Behavior Intervention

1. What principles should guide school personnel in their approach to student behavior?

Maryland's regulations begin with this key statement: "School personnel are encouraged to use an array of positive behavior interventions, strategies, and supports to increase or decrease targeted student behaviors."

Public agencies should emphasize the positive and proactive methods in the use of behavior interventions, strategies, and supports. Generally, the term "positive behavior interventions" refers to therapeutic methods of modifying behavior or certain types of behavior therapy. "Positive strategies" include adapting teaching methods for a student, such as using visual prompting or frequent feedback. "Positive supports" may include equipment or "extra hands" to fill a need, such as an augmentative communication device, assistive technology, or adult assistance.

Positive behavior interventions, strategies, and supports are intended to be used for two reasons: First, to increase the occurrence of behaviors that school personnel want to encourage, and second, to decrease behaviors that school personnel want to lessen or eliminate. It is important to remember that responding in a positive and rewarding way to behavior that school personnel want to see, i.e., "catching a student being good" is just as, if not more important than developing a behavior plan that focuses on the negative behaviors that school personnel seek to eliminate.

The regulations specify the need for an "array" of positive approaches because it is quite possible that no one approach by itself will work. Depending on the nature of the

challenging behavior presented by the student, it may be necessary to try several interventions, strategies, or supports, or a variety of approaches in combination, in order to find an approach that works. It is also important that the IEP team focus on "targeted student behaviors." A generic behavior plan that does not address the specific challenges presented by the student will not work effectively. A process of identifying target behaviors, planning how to address them, and deciding on the particular interventions, strategies, and supports is necessary. Positive behavior interventions, strategies, and supports focus on proactive ways of preventing targeted challenging behaviors instead of reacting to a challenging behavior after its occurrence. While these regulations govern the use of restraint and seclusion in schools, if positive behavior interventions, strategies, and supports are implemented appropriately, the use of restraint and seclusion should be truly limited to unavoidable emergency situations

2. The regulations state that unless not feasible, less restrictive or alternative approaches to behavior must be used prior to the use of restraint or seclusion. What are less restrictive or alternative approaches?

In this context, "less restrictive" refers to approaches that have a less substantial impact on the student's ability to:

- Move;
- Communicate with others;
- Make choices; and
- Participate in school activities with other students.

Alternative approaches" refers to a wide variety of responses such as substituting a different activity or implementing a therapeutic approach. For example, a student who becomes agitated during an academic task and begins kicking his desk might be permitted to walk around the classroom. Or a student who becomes upset by too much sensory stimulation and begins to scream might be allowed to go to another room and hold a stuffed animal to settle down.

3. How can it be determined if less restrictive or alternative approaches to restraint or seclusion are not feasible, as the regulations require?

The regulations state that exclusion, restraint, and seclusion may be used only after less restrictive or alternative approaches have been considered and attempted or determined not to be feasible. In making the determination as to whether less restrictive or alternative approaches are not feasible, school staff should consider the following:

1. Is the situation an emergency? Does the student pose an imminent risk of significant physical harm to self or others? Are there time, space, or personnel limitations that prevent less restrictive or alternative approaches from being implemented or from being implemented safely or effectively?
2. Is the situation one that arises frequently? If so, it should be addressed with positive behavioral supports as part of the student's behavior intervention plan and should be part of his or her IEP. It is not appropriate to respond to a chronic situation with an emergency response, which is what exclusion, restraint, and seclusion are considered

to be.

3. What supplementary aids and services and programmatic modifications and supports will enable the student with behavioral needs to be successfully served in the general education setting and in nonacademic and extracurricular activities? Remember that to the greatest extent possible, students should be educated in the general education classroom with appropriate supports in place. Students should not be removed solely on the basis of their disability, because of administrative convenience, or because of the configuration of the service delivery system. The supplementary aids, services, supports, and program modifications that will help the student be educated successfully in the least restrictive environment possible must be provided. If these supports and supplementary aids and services have not been provided, it is unlikely that a meaningful determination can be made that less restrictive alternatives to restraint and seclusion were not available.
4. **When considering the use of exclusion, restraint, or seclusion, what other factors must be considered?**
 1. The use of exclusion, restraint, and seclusion must be implemented in a "humane, safe, and effective" manner. It is important to consider whether the proposed intervention promotes "a safe, inclusive, equitable learning community." Evaluations of safety and efficacy should be based on data at the individual student level and at the level of peer-reviewed research. At the individual student level, school personnel must be able to use data to determine if the use of exclusion, restraint, or seclusion is effective in changing the targeted behavior, is safe, and is not causing detrimental effects in other aspects of the student's life, at the system level, school-based practices should be research-based.
 2. The use of exclusion, restraint, and seclusion must be "consistent with known medical or psychological limitations." It is essential that medical contraindications, such as, asthma, seizures, or other medical conditions be considered by school personnel when determining the use of exclusion, restraint, and seclusion. Likewise, psychological history, such as past sexual abuse or abandonment must be considered as well. To re-traumatize a student through the use of exclusion, restraint, or seclusion will only exacerbate the behavior issues that need to be addressed.
 3. When exclusion, restraint, and seclusion are used, they must be used "without intent to harm or create discomfort." Exclusion, restraint, and seclusion cannot be used as punishment or discipline or for retaliatory purposes.

These provisions do not override the authority that school personnel have to address questions of disciplinary action, allegations of criminal activity, or security risk.

Behavior Assessments and Intervention Planning

5. Is “functional behavior assessment” defined in the regulations?

Yes. "Functional behavior assessment" is defined as "the systematic process of gathering information to guide development of an effective and efficient behavior intervention plan for the problem behavior." It includes the identification of the functions of the behavior, a description of the behavior exhibited in the educational setting, and identification of environmental and other factors and settings that contribute to or predict the occurrence, nonoccurrence, or maintenance of the behavior. This definition is particularly significant because the IDEA does not define functional behavior assessment.

6. Why is a functional behavioral assessment (FBA) important?

Functional behavioral assessment is the process of gathering information that reliably predicts the conditions and/or circumstances surrounding a student's behavior that is considered inappropriate. The purpose of an FBA is to determine how the behavior functions for the student. All behaviors serve a function for individuals. We behave to get something, avoid something, or control activities. When students exhibit behaviors considered problematic, a behavioral assessment is needed to accurately describe and ascertain how the behavior functions for the students.

Before personnel are able to redirect instructional interventions and supports or teach an appropriate replacement behavior, the targeted behavior must be identified across settings and described in accurate, objective, observable terms. For an appropriate replacement behavior or strategy for the identified problem behavior to be successful, the replacement behavior must satisfy the same function for the student. This assessment is a collaborative, student-centered, problem-solving process.

7. When must an FBA be conducted?

For students with disabilities, under the IDEA, a functional behavioral assessment is required once the student's behavior has resulted in a removal or series of removals equivalent to 10 school days. However, it is recommended that the FBA process be applied to any student's behaviors wherever those behaviors are of concern. The purpose of an FBA is to improve our understanding of behavior and the context in which it is observed, and to use this information to guide the development of behavior support plans. Whenever a problem behavior is first observed, the FBA process is used to enable professionals to develop a behavioral support plan. As such, an FBA should be conducted whenever a student's behavior is difficult to understand and/or a student's behavioral support plan needs to be developed or improved.

8. Do the State regulations define "behavior intervention plan?"

Yes. In State regulations, Maryland defines a behavioral intervention plan as "a proactive plan designed to address problem behaviors exhibited by a student in the educational setting through the use of positive behavioral interventions, strategies, and supports." The proactive nature of the plan and its emphasis on positive interventions, strategies, and supports will be discussed in the next section of this document.

9. Who conducts the FBA?

The Individuals with Disabilities Education Act (IDEA) and Code of Maryland Regulations (COMAR) do not specify a particular professional discipline or group of school personnel as the individuals to conduct the FBA. However, all staff members in a school should understand the purpose of conducting an FBA, be familiar with the basic steps of the process, and be able to participate in the FBA process. Therefore, all staff members should receive instruction on the purpose and features of FBA, and have opportunities to observe or participate in the FBA process. Personnel should receive training to be technically fluent with the FBA process and have the capacity to accurately and efficiently conduct an FBA.

10. How are the outcomes of an FBA used and what is the relationship between an FBA and a behavior intervention plan (BIP)?

In determining appropriate strategies for the student, the results of the FBA are used to develop and implement a BIP. This plan must also consider the student's strengths and the concerns of the student's parents. The BIP should focus on positive supports and strategies to address the events, environmental factors, and/or actions that trigger the behavior, to teach the student a replacement behavior or skill that serves the same functional intent for the student and how to implement the BIP consistently across settings.

11. What are positive behavioral interventions and supports and what does IDEA say about positive interventions?

The purpose of positive interventions is to teach the student appropriate replacement behaviors that serve the same function for the student. Interventions and supports should focus on proactive preventative natural supports for the student. Intervening and altering the known environment, activities, and our responses to the behavior by modeling and positively reinforcing the desired appropriate behavior within the setting is more efficient and effective for both the student and the staff. The IDEA requires a student's IEP team to consider positive behavior interventions, strategies, and supports to address the behavior when that behavior impedes the student's learning or the learning of others. The identified interventions shall be included in the student's IEP as appropriate. IDEA also specifically requires the involvement of the student's general education teacher in the development, review, and revision of the student's IEP to assist in determining appropriate positive interventions and strategies for the student.

Exclusion

12. When may exclusion be used?

School personnel may use exclusion to address a student's behavior:

- a. If the student's behavior unreasonably interferes with the student's learning or the learning of others;
- b. If the student's behavior constitutes an emergency and exclusion is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate;
- c. If exclusion is requested by the student; or
- d. If supported by the student's behavior intervention plan.

However, exclusion should not be used for behaviors which are merely annoying or which can be redirected or de-escalated. In determining whether to use exclusion, school personnel should consider the student's capacity to understand why he or she is being removed from the learning environment. A student who is unable to understand the reason for removal will be unable to participate meaningfully in the process for bringing the exclusion to an end.

13. What happens during exclusion?

School personnel must ensure that each period of exclusion is appropriate to the developmental level of the student, the severity of the behavior, does not exceed 30 minutes. During this period, school personnel must monitor the student. School personnel must provide the student with an explanation of the behavior that resulted in the exclusion and instructions on the behavior required to return to the learning environment. This is a particularly important requirement, and school personnel must be sensitive to the student's disability as well as his or her individual needs when implementing this requirement. For example, for a student with autism or an auditory processing disorder, the stress of processing a verbal explanation and instructions while he or she is upset may be too complex and overwhelming; the student may need modeling or an alternative presentation of the explanation and instructions.

14. Is there a limit to the amount of time a student can be placed in exclusion or the number of times?

If numerous periods of exclusion occur and a cumulative total of 10 school days is reached during a school year, the procedural requirements governing the disciplinary removal of students with disabilities will apply.

Restraint

15. What is physical restraint?

Physical restraint is defined as "the use of physical force, without the use of any device or material that restricts the free movement of all or a portion of a student's body." Physical restraint does **not** include briefly holding a student to calm or comfort him or her, holding the student's hand or arm to escort him or her to another area, moving a disruptive student who is unwilling to leave the area if other methods such as counseling have not been successful, or intervening in a fight. A physical restraint shall be removed as soon as the student is calm and may not exceed 30 minutes. In applying physical restraint, school personnel may not place a student in a face down position or in any other position that will:

- (i) Obstruct a student's airway or otherwise impair a student's ability to breathe;
- (ii) Obstruct a staff member's view of a student's face;
- (iii) Restrict a student's ability to communicate distress;
- (iv) Place pressure on a student's head, neck, or torso; or
- (v) Straddle a student's torso.

16. When may physical restraint be used?

Physical restraint may be used:

- In an emergency situation in order to protect the student or others from "imminent, serious, physical harm" after other less intrusive, non-physical interventions have failed or been determined inappropriate;
- When a student's behavioral intervention plan or IEP describes the specific behaviors and circumstances in which physical restraint may be used; or
- The parents of a non-disabled student have otherwise provided written consent to the use of physical restraints while a behavior intervention plan is being developed.

If physical restraint is used in an emergency, it may not be used past the point at which the emergency has ended. In applying physical restraint, school personnel shall only use reasonable force as is necessary to protect a student or other person from imminent, serious, physical harm. Physical restraint shall be removed as soon as the student is calm and may not exceed 30 minutes.

Physical restraint **may not** be used to:

- Discipline, punish, or retaliate;
- Get a student to focus on instruction during class time; and
- Prevent a student from causing property damage.

17. May school personnel use mechanical restraint?

NO. The use of mechanical restraints is prohibited. Neckties, scarves, tape, rope, cord, seatbelts, Rifton Chairs (if **not** used for purposes other than prescribed by a health professional), helmets (if **not** used for purposes other than prescribed by a health professional), or any other similar equipment, objects, or devices, are mechanical restraints if used to prevent a student from moving all or any of his or her body for a reason other than that prescribed by a health professional and for the purpose for which the device is intended by the manufacturer.

18. What should happen if emergencies requiring restraint occur frequently?

Frequent emergencies should raise concerns about the efficacy of the student's behavioral intervention plan. Repeated challenging behavior that leads to an emergency situation can be anticipated and should be addressed through the "array of positive behavior interventions, strategies, and supports" required by the regulations. Any determination that positive behavior interventions, strategies, and supports cannot address the identified behavior should be based on data. Likewise, any determination that restraint is necessary should be based on data to support the efficacy of restraint in addressing that behavior in the school setting,

19. What are the documentation requirements for the use of restraint?

Whenever a student is restrained by school personnel, the restraint must be documented in the student's educational record. The documentation must be available to the parent or guardian, and the parent or guardian must be notified about the restraint verbally or in writing within 24 hours, unless the student's behavior plan or the IEP require some other arrangement. School personnel must document the following:

1. Other less intrusive interventions that have failed or been determined inappropriate;
2. The precipitating event immediately preceding the behavior that prompted the used of restraint;
3. The behavior that prompted the use of restraint;
4. The names of school personnel who observed the behavior that prompted the use of restraint;
5. The names and signatures of the staff members implementing and monitoring the use of restraint;
6. A description of the restraint event, including the type of restraint, the length of time in restraint, the student's behavior and reaction during the restraint, and the name and signature of the administrator informed of the use of restraint.

Seclusion

20. When may seclusion be used?

As with restraint, seclusion may be used:

In an emergency situation in order to protect the student or another person after other less intrusive interventions have failed or been determined to be inappropriate;

When a student's IEP or behavioral intervention plan describes the specific behaviors and circumstances in which seclusion may be used; or

The parents of a non-disabled student have otherwise provided written consent for the use of seclusion while a behavior intervention plan is being developed.

Seclusion may not be used for discipline, punishment, or retaliation. It may not be used to prevent a student from causing property damage. If used in an emergency situation, it may not be used past the point at which the emergency has ended.

In considering whether seclusion is appropriate, school personnel should consider the student's capacity to understand why he or she is being removed from the learning environment. A student who is unable to understand the reason for removal will be unable to participate meaningfully in the process for bringing the seclusion to an end.

A seclusion event shall be appropriate to the student's developmental level and severity of the behavior. It may not restrict the student's ability to communicate distress and may not exceed 30 minutes.

Additionally, school personnel should consider the nature of the situation for which seclusion is being considered. If it is a true emergency, which is the only legitimate reason for the use of seclusion, consideration must be given to the safety issues involved in transporting a student to a seclusion room, as opposed to using a different intervention, including, if absolutely necessary, physical restraint as an alternative to seclusion.

21. May any space be used for seclusion?

No. There are specific requirements for a room used for seclusion. At a minimum, the room must not contain any objects or fixtures with which a student could harm him or herself. School personnel must be able to see the student adequately from an adjacent area. Additionally, the room must provide adequate lighting and ventilation. It is unlikely that a box, closet or concrete, unpadded room, for instance, will meet these requirements.

22. What happens during seclusion?

When a student is placed in seclusion, school personnel must watch him or her at all times. As with exclusion, school personnel must provide the student with an explanation of the behavior that resulted in seclusion and instructions on the behavior required to return to the

learning environment. As discussed in the section regarding exclusion, this is a particularly important requirement. School personnel must be sensitive to the student's disability, as well as to his or her individual needs when implementing this requirement. For some students, verbal presentation of the explanation and instructions may not be appropriate. As stated above in question # 21, a seclusion event shall be appropriate to the student's developmental level and severity of the behavior. It may not restrict the student's ability to communicate distress and may not exceed 30 minutes.

23. May any individual identified as a school employee implement seclusion?

No. Only school personnel (employees) trained in the appropriate use of seclusion may use seclusion with a student under the conditions specified above in question #21.

24. What should happen if emergencies requiring seclusion occur frequently?

Frequent emergencies should raise concerns about the efficacy of the student's behavioral intervention plan. Repeated challenging behavior that leads to an emergency situation can be anticipated and should be addressed through the "array of positive behavior interventions, strategies, and supports" required by the regulations. Any determination that positive behavior interventions, strategies, and supports cannot address the identified behavior should be based on data. Likewise, any determination that seclusion is necessary should be based on data to support the efficacy of seclusion in addressing that behavior in the school setting.

25. What are the documentation requirements for the use of seclusion?

Each time a student is placed in seclusion by school personnel, the seclusion must be documented in the student's educational record. The documentation must be available to the parent or guardian, and the parent or guardian must be notified about the seclusion verbally or in writing within 24 hours, unless the student's behavior plan or the IEP requires some other arrangement. School personnel must document the following:

1. Other less intrusive interventions that have failed or been determined inappropriate;
2. The precipitating event immediately preceding the behavior that prompted the use of seclusion;
3. The behavior that prompted the use of seclusion;
4. The names and signatures of the staff members implementing and monitoring the seclusion;
5. A description of the seclusion event, including justification for initiating the use of seclusion, the length of time in seclusion, the student's behavior and reaction during the seclusion, and the name and signature of the administrator informed of the use of seclusion.

26. Do the regulations require review by an IEP team if a student has been restrained or placed in seclusion?

This is an individualized decision that needs to be made on a case-by-case basis. If a student has not been identified as a student with disabilities and restraint or seclusion is used, the student must immediately be referred to the school's pupil services team or to the student's IEP team. The choice lies with school personnel who can assess whether the student's behavior appears to be an unusual, isolated event or an ongoing interference that needs to be assessed.

If restraint or seclusion is used for a student who already is identified as being a student with a disability and the student's IEP or behavior intervention plan does not include the use of restraint or seclusion, the IEP team must meet within 10 business days of the incident to consider the need for a functional behavioral assessment, the development of appropriate behavior interventions, and the implementation of a behavioral intervention plan. If a student's IEP or behavior intervention plan does include the use of restraint or seclusion, the document shall specify how often the IEP team will meet to review or revise the document, as appropriate.

Administrative Procedures

27. Does the IEP team have any additional obligations?

Yes. The IEP team must consider existing health, physical, psychological, and psychosocial information, information provided by the parents, observations by teachers and related service providers, and the student's current placement. When the IEP team proposes or refuses to initiate or change the student's IEP or behavior intervention plan that includes the use of restraint or seclusion, the local school system or nonpublic school must provide the student's parent with prior written notice in accordance with federal and State law. The parent may file for mediation or a due process complaint if he or she disagrees with the IEP team's proposals or refusals.

28. Do public agencies have any obligations to develop policies and procedures regarding exclusion, restraint, and seclusion?

Yes. Each public agency and nonpublic school must develop policies and procedures to address:

1. A continuum of positive behavioral interventions, strategies, and supports for use by school personnel before exclusion, restraint or seclusion;
2. The prevention of self-injurious behaviors;
3. Methods for identifying and defusing potentially dangerous behavior;
4. The use and documentation of exclusion;
5. The use of restraint; and
6. The use of seclusion..

In accordance with COMAR 13A.08.01.10 each local board of education shall have a

document on students' responsibilities and rights. This document shall conform to guidelines established by the State Board of Education. The local document shall be disseminated periodically to all members of the school community, including students, teachers, administrators, and parents or guardians. Local school systems are to involve representatives of the school community in the review of the document.

29. Do the public agencies and nonpublic schools have to conduct any professional development activities?

Yes. Each public agency and nonpublic school must provide professional development to designated school personnel regarding the regulations and the appropriate implementation of the policies and procedures developed in accordance with the regulations.

At the beginning of each school year, each public agency and nonpublic school must identify school personnel authorized to serve as a school-wide resource to assist in ensuring that exclusion, restraint, and seclusion are utilized properly at the school. These school personnel shall receive training in current, professionally accepted practices and standards regarding:

1. Positive behavior interventions, strategies, and supports;
2. Functional behavior assessment and behavior intervention planning;
3. Exclusion;
4. Restraint, including alternatives to restraint;
5. Seclusion; and
6. Symptoms of physical distress and positional asphyxia.

The professional development described above shall include a written examination and physical demonstration of proficiency in the described skills and competencies. Additional areas in which public agencies and nonpublic schools may wish to consider training to include child development, trauma recognition and prevention, neurobiological and psychological effects of trauma, relationship-building and collaborative problem-solving, collaborating with families to create and maintain positive behavioral supports, matching behaviors with interventions, prevention and de-escalation techniques, signs of physical distress, systemic effects of the use of restraint and seclusion on bystanders, legal and ethical issues, investigation of injuries and complaints, documentation, and data collection and analysis.

30. Do public agencies and nonpublic schools have an oversight role with respect to the use of exclusion, restraint, and seclusion?

Yes. Each public agency and nonpublic school must develop policies and procedures regarding monitoring the use of exclusion, restraint, and seclusion, and receiving and investigating complaints regarding exclusion, restraint, and seclusion practices.

Additionally, the Maryland State Department of Education may monitor and ask for any information about any matter related to exclusion, restraint, or seclusion implemented by a public agency or nonpublic school. The Department must provide written notice of the requested information and specify the time and manner in which the public agency or nonpublic school shall answer the request.

For more information, call 410-767-7548

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